

AMENDED IN ASSEMBLY AUGUST 12, 2004

SENATE BILL

No. 1609

Introduced by Senator ~~Ducheny~~ Dunn
(Coauthors: Senators Ducheny and Hollingsworth)

February 20, 2004

~~An act to amend Section 50650 of the Health and Safety Code, An act to amend Section 65589.5 of the Government Code, relating to housing.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1609, as amended, ~~Ducheny~~ Dunn. ~~CalHome Program.~~
Housing development project: local agencies.

Under the Planning and Zoning Law, local agencies are required to make specified findings based upon substantial evidence before disapproving or conditionally approving a housing development project that renders it infeasible for the use of low- and moderate-income households. This law requires that when a proposed housing development project complies with the applicable general plan, zoning, and development policies in effect at the time that the project's application is determined to be complete, a local agency may not propose to disapprove the project or conditionally approve it at a lower density unless the agency bases its decision on written findings supported by substantial evidence on the record that certain conditions exist.

This bill would make changes in these conditions that a local agency is required to find and would revise the definition of "housing development project." The bill would also expand the instances in which a local agency votes on a specified application and the application is disapproved.

The bill would require a local agency that requires a development project to comply with objective, quantifiable, written development standards, conditions, and policies consistent with meeting the jurisdiction's share of the regional housing need to apply these requirements to facilitate and accommodate development at density permitted on the site and proposed by the development project.

The bill would also authorize a court, as specified, to vacate a decision of a local agency in any action to enforce the provisions of the bill and to direct the local agency to issue any necessary approval or permit to an applicant for a development project. The bill would require the local agency to carry out the order of the court within 30 days of its entry and, upon its failure to do so, the order would be deemed to be the action of the local agency unless the applicant consents to a different decision by the agency.

~~The CalHome Program authorizes funds appropriated for purposes of the program to be used to enable low- and very low-income households to become or remain homeowners.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — Section 50650 of the Health and Safety Code is~~
- 2 *SECTION 1. Section 65589.5 of the Government Code is*
- 3 *amended to read:*
- 4 65589.5. (a) The Legislature finds and declares all of the
- 5 following:
- 6 (1) The lack of housing is a critical problem that threatens the
- 7 economic, environmental, and social quality of life in California.
- 8 (2) California housing has become the most expensive in the
- 9 nation. The excessive cost of the state's housing supply is partially
- 10 caused by activities and policies of many local governments that
- 11 limit the approval of housing, increase the cost of land for housing,
- 12 and require that high fees and exactions be paid by producers of
- 13 housing.
- 14 (3) Among the consequences of those actions are
- 15 discrimination against low-income and minority households, lack
- 16 of housing to support employment growth, imbalance in jobs and

1 housing, reduced mobility, urban sprawl, excessive commuting,
2 and air quality deterioration.

3 (4) Many local governments do not give adequate attention to
4 the economic, environmental, and social costs of decisions that
5 result in disapproval of housing projects, reduction in density of
6 housing projects, and excessive standards for housing projects.

7 (b) It is the policy of the state that a local government not reject
8 or make infeasible housing developments that contribute to
9 meeting the housing need determined pursuant to this article
10 without a thorough analysis of the economic, social, and
11 environmental effects of the action and without complying with
12 subdivision (d).

13 (c) The Legislature also recognizes that premature and
14 unnecessary development of agricultural lands for urban uses
15 continues to have adverse effects on the availability of those lands
16 for food and fiber production and on the economy of the state.
17 Furthermore, it is the policy of the state that development should
18 be guided away from prime agricultural lands; therefore, in
19 implementing this section, local jurisdictions should encourage, to
20 the maximum extent practicable, in filling existing urban areas.

21 (d) A local agency shall not disapprove a housing development
22 project, including farmworker housing as defined in subdivision
23 (d) of Section 50199.50 of the Health and Safety Code, for very
24 low, low- or moderate-income households or condition approval,
25 including through the use of design review standards, in a manner
26 that renders the project infeasible for development for the use of
27 very low, low- or moderate-income households unless it makes
28 written findings, based upon substantial evidence in the record, as
29 to one of the following:

30 ~~(1) The jurisdiction has adopted a housing element pursuant to~~
31 ~~this article that has been revised in accordance with Section 65588~~
32 ~~and that is in substantial compliance with this article, and the~~
33 ~~development project is not needed for the jurisdiction to meet its~~
34 ~~share of the regional housing need for very low, low-, or~~
35 ~~moderate-income housing.~~

36 ~~(2) The development project as proposed would have a~~
37 ~~specific, adverse impact upon the public health or safety, and there~~
38 ~~is no feasible method to satisfactorily mitigate or avoid the specific~~
39 ~~adverse impact without rendering the development unaffordable~~
40 ~~to low- and moderate-income households. As used in this~~

1 paragraph, a “specific, adverse impact” means a significant,
2 quantifiable, direct, and unavoidable impact, based on objective,
3 identified written public health or safety standards, policies, or
4 conditions as they existed on the date the application was deemed
5 complete.

6 ~~(3)–~~

7 (2) The denial of the project or imposition of conditions is
8 required in order to comply with specific state or federal law, and
9 there is no feasible method to comply without rendering the
10 development unaffordable to low- and moderate-income
11 households.

12 ~~(4) Approval of the development project would increase the~~
13 ~~concentration of lower income households in a neighborhood that~~
14 ~~already has a disproportionately high number of lower income~~
15 ~~households and there is no feasible method of approving the~~
16 ~~development at a different site, including those sites identified~~
17 ~~pursuant to paragraph (1) of subdivision (c) of Section 65583,~~
18 ~~without rendering the development unaffordable to low- and~~
19 ~~moderate income households.~~

20 ~~(5)–~~

21 (3) The development project is proposed on land zoned for
22 agriculture or resource preservation that is surrounded on at least
23 two sides by land being used for agricultural or resource
24 preservation purposes, or ~~which does not have~~ *cannot be provided*
25 *with adequate water or wastewater facilities to serve the project.*

26 ~~(6)–~~

27 (4) The development project is inconsistent with both the
28 jurisdiction’s zoning ordinance and general plan land use
29 designation as specified in any element of the general plan as it
30 existed on the date the application was deemed complete, and the
31 jurisdiction has adopted a housing element ~~pursuant to this article.~~
32 *that has been revised in accordance with Section 65588 and that*
33 *the department has determined pursuant to Section 65585 to be in*
34 *substantial compliance with this article. This subdivision may not*
35 *be utilized to deny a housing development project if the*
36 *development project is proposed on a site that is identified for very*
37 *low, low-, or moderate-income households in the jurisdiction’s*
38 *housing element, and consistent with the density specified in the*
39 *housing element, even though it is inconsistent with both the*

1 *jurisdiction's zoning ordinance and general plan land use*
2 *designation.*

3 (e) Nothing in this section shall be construed to relieve the local
4 agency from complying with the Congestion Management
5 Program required by Chapter 2.6 (commencing with Section
6 65088) of Division 1 of Title 7 or the California Coastal Act
7 (Division 20 (commencing with Section 30000) of the Public
8 Resources Code). Neither shall anything in this section be
9 construed to relieve the local agency from making one or more of
10 the findings required pursuant to Section 21081 of the Public
11 Resources Code or otherwise complying with the California
12 Environmental Quality Act (Division 13 (commencing with
13 Section 21000) of the Public Resources Code).

14 ~~(f) Nothing in this section shall be construed to prohibit a local~~
15 ~~agency from requiring the development project to comply with~~
16 ~~written development standards, conditions, and policies~~
17 ~~appropriate to, and consistent with, meeting the quantified~~
18 ~~objectives relative to the development of housing, as required in~~
19 ~~the housing element pursuant to subdivision (b) of Section 65583.~~
20 *A local agency may require the development project to comply with*
21 *objective, quantifiable, written development standards,*
22 *conditions, and policies appropriate to, and consistent with,*
23 *meeting the jurisdiction's share of the regional housing need*
24 *pursuant to Section 65584. However, the development standards,*
25 *conditions, and policies shall be applied to facilitate and*
26 *accommodate development at the density permitted on the site and*
27 *proposed by the development project.* Nothing in this section shall
28 be construed to prohibit a local agency from imposing fees and
29 other exactions otherwise authorized by law ~~which~~ *that* are
30 essential to provide necessary public services and facilities to the
31 development project.

32 (g) This section shall be applicable to charter cities because the
33 Legislature finds that the lack of housing is a critical statewide
34 problem.

35 (h) The following definitions apply for the purposes of this
36 section:

37 (1) "Feasible" means capable of being accomplished in a
38 successful manner within a reasonable period of time, taking into
39 account economic, environmental, social, and technological
40 factors.

(2) “Housing development project” means a use consisting of either of the following:

(A) ~~Residential units only.~~ *A development project consisting of one or more residential dwelling units, a community care facility, a residential care facility for the elderly and emergency shelter facility. For the purposes of this section, the percentage of affordable units in housing development projects that do not include individual dwelling units shall be calculated as the number of bed spaces sold, rented, or made available to the respective income group as a percentage of total bed spaces sold, rented, or made available in the facility.*

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, “neighborhood commercial” means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(3) “Housing for very low, low-, or moderate-income households” means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(4) “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal

1 commitments to ensure continued availability of units for very low
2 or low-income households in accordance with the provisions of
3 this subdivision for 30 years.

4 (5) “Neighborhood” means a planning area commonly
5 identified as such in a community’s planning documents, and
6 identified as a neighborhood by the individuals residing and
7 working within the neighborhood. Documentation demonstrating
8 that the area meets the definition of neighborhood may include a
9 map prepared for planning purposes which lists the name and
10 boundaries of the neighborhood.

11 (6) “Disapprove the development project” includes any
12 instance in which a local agency does either of the following:

13 (A) Votes on a proposed housing development project
14 application, *including, but not limited to, an application for a*
15 *rezone of the site, a conditional use, planned development,*
16 *subdivision map or other discretionary permit, or a variance,* and
17 the application is disapproved.

18 (B) Fails to comply with the time periods specified in
19 subparagraph (B) of paragraph (1) of subdivision (a) of Section
20 65950. An extension of time pursuant to Article 5 (commencing
21 with Section 65950) shall be deemed to be an extension of time
22 pursuant to this paragraph.

23 (i) If any city, county, or city and county denies approval or
24 imposes restrictions, including design changes, a reduction of
25 allowable densities or the percentage of a lot that may be occupied
26 by a building or structure under the applicable planning and zoning
27 in force at the time the application is deemed complete pursuant
28 to Section 65943, that have a substantial adverse effect on the
29 viability or affordability of a housing development for very low,
30 low-, or moderate-income households, and the denial of the
31 development or the imposition of restrictions on the development
32 is the subject of a court action which challenges the denial, then the
33 burden of proof shall be on the local legislative body to show that
34 its decision is consistent with the findings as described in
35 subdivision (d) and that the findings are supported by substantial
36 evidence in the record.

37 (j) When a proposed housing development project complies
38 with applicable, objective general plan and zoning standards and
39 criteria, including design review standards, in effect at the time
40 that the housing development project’s application is determined

1 to be complete, but the local agency proposes to disapprove the
2 project or to approve it upon the condition that the project be
3 developed at a lower density, the local agency shall base its
4 decision regarding the proposed housing development project
5 upon written findings supported by substantial evidence on the
6 record that both of the following conditions exist:

7 (1) The housing development project would have a specific,
8 adverse impact upon the public health or safety unless the project
9 is disapproved or approved upon the condition that the project be
10 developed at a lower density. As used in this paragraph, a
11 “specific, adverse impact” means a significant, quantifiable,
12 direct, and unavoidable impact, based on objective, identified
13 written public health or safety standards, policies, or conditions as
14 they existed on the date the application was deemed complete.

15 (2) There is no feasible method to satisfactorily mitigate or
16 avoid the adverse impact identified pursuant to paragraph (1),
17 other than the disapproval of the housing development project or
18 the approval of the project upon the condition that it be developed
19 at a lower density.

20 (k) If in any action brought to enforce the provisions of this
21 section, a court finds that the local agency disapproved a project
22 or conditioned its approval in a manner rendering it infeasible for
23 the development of housing for very low, low-, or
24 moderate-income households, including farmworker housing,
25 without making the findings required by this section or without
26 making sufficient findings supported by substantial evidence, the
27 court shall issue an order or judgment compelling compliance with
28 this section within 60 days, including, but not limited to, an order
29 that the local agency take action on the development project. The
30 court shall retain jurisdiction to ensure that its order or judgment
31 is carried out and shall award reasonable attorney fees and costs of
32 suit to the plaintiff or petitioner who proposed the housing
33 development, except under extraordinary circumstances in which
34 the court finds that awarding fees would not further the purposes
35 of this section. If the court determines that its order or judgment
36 has not been carried out within 60 days, the court may ~~issue further~~
37 ~~orders as provided by law to ensure that the purposes and policies~~
38 ~~of this section are fulfilled.~~ *vacate the decision of the local agency*
39 *and direct the local agency to issue any necessary approval or*
40 *permit to the applicant. The local agency shall carry out the order*

1 of the court within 30 days of its entry and, upon failure to do so,
2 the order of the court shall for all purposes, be deemed to be the
3 action of the local agency, unless the applicant consents to a
4 different decision by the local agency.

5 (l) In any action, the record of the proceedings before the local
6 agency shall be filed as expeditiously as possible and,
7 notwithstanding Section 1094.6 of the Code of Civil Procedure, all
8 or part of the record may be filed (1) by the petitioner with the
9 petition or petitioner's points and authorities, (2) by the respondent
10 with respondent's points and authorities, (3) after payment of costs
11 by the petitioner, or (4) as otherwise directed by the court. If the
12 expense of preparing the record has been borne by the petitioner
13 and the petitioner is the prevailing party, the expense shall be
14 taxable as costs.

15 amended to read:

16 ~~50650. The Legislature finds and declares as follows:~~

17 ~~(a) An adequate supply of safe and affordable housing is the~~
18 ~~foundation for strong and sustainable communities. Owner~~
19 ~~occupied housing is a key housing resource, contributing to~~
20 ~~neighborhood stability as well as economic vitality.~~

21 ~~(b) In California, homeownership is beyond the reach of a large~~
22 ~~segment of the population. There are also many homeowners who~~
23 ~~lack the resources to make necessary repairs to their homes, or who~~
24 ~~would welcome the opportunity to share them with suitable~~
25 ~~tenants.~~

26 ~~(c) Reflecting California's diversity, there is a variety of proven~~
27 ~~approaches to the promotion of homeownership within the state.~~
28 ~~The purpose of the CalHome Program established by this chapter~~
29 ~~is to support homeownership programs aimed at lower and very~~
30 ~~low income households and operated by private nonprofit and~~
31 ~~local government agencies, and thereby to increase~~
32 ~~homeownership, encourage neighborhood revitalization and~~
33 ~~sustainable development, and maximize use of existing homes.~~

34 ~~(d) The CalHome Program is intended to take the place of the~~
35 ~~Senior Citizens' Shared Housing Program established by Chapter~~
36 ~~3.6 (commencing with Section 50533), which is repealed by the~~
37 ~~act enacting this chapter.~~